

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**FRANK ROSELLI,**

**Petitioner,**

**v.**

**SUPERINTENDANT SMITH, *et al.*,  
Defendants.**

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**Civ. No. 17-2196**

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**ORDER**

**AND NOW**, this 2nd day of November, 2020, it is hereby **ORDERED** that:

1. The Report and Recommendation (Doc. No. 34) is **APPROVED and ADOPTED**;
2. It is **ORDERED** that the Petition for Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. No. 1) is **DENIED** with respect to Petitioner's ineffectiveness claim;
3. It is further **ORDERED** that the Petition is conditionally **GRANTED** with respect to Petitioner's Apprendi claim, subject to Petitioner's resentencing in state court;
4. The Montgomery County Common Pleas Court shall resentence Petitioner in accordance with the Memorandum in this matter within 90 days of the date of this Order. If that court fails to do so, Petitioner shall be released from custody;
5. A Certificate of Appealability shall **NOT ISSUE** with respect to the ineffectiveness claim. See 28 U.S.C. § 2253(c)(1)(A); Slack v. McDaniel, 529 U.S. 473, 484 (2000); and
6. The **CLERK OF COURT** shall **CLOSE** this case.

**AND IT IS SO ORDERED.**

/s/ Paul S. Diamond

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Paul S. Diamond, J.